

MERCHANT SERVICES BANKCARD AGREEMENT

California Department of Child Support Services

Customer's Legal Name	Doing Business As
11120 International Drive	Rancho Cordova, CA 95670
Street Address	City State Zip Code
Government	68-0446735
Specify Whether Customer is (circle one) a Corporation, Partnership, Sole Proprietorship, Non-Profit or Other Type of Entity	Taxpayer Identification Number
Steve Matranga	916-576-8871
Recipient For Notices Under Paragraph 26.5	Facsimile Number

This Merchant Services Bankcard Agreement ("Agreement") is among the CUSTOMER identified above, WELLS FARGO BANK N.A. ("BANK") and FIRST DATA MERCHANT SERVICES CORPORATION d/b/a EMPS Merchant Services ("FDMS") (BANK and FDMS are collectively referred to as "SERVICERS").

BANK, as a member of Visa U.S.A., Inc. ("VISA") and MasterCard International Incorporated ("MasterCard"), is responsible for its VISA and MasterCard bankcard programs and has authorized FDMS or its members pursuant to a separate agreement (the "Agency Agreement") to act as an agent of and in conjunction with BANK in performing authorization, processing and settlement services for merchants participating in BANK's MasterCard and VISA bankcard programs, in performing the additional services with respect to other cards as specified on the schedules to this Agreement and in taking related actions. FDMS is acting in such capacity by executing and performing this Agreement. As between themselves, the respective rights and obligations of FDMS and BANK shall be governed by the Agency Agreement and Association Rules.

In consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, SERVICERS and CUSTOMER agree as follows:

1. **Definitions.** As used in this Agreement, capitalized terms will have the meaning set forth in Annex 1.
2. **Services.**
 - 2.1 ~~During the term of the Agreement, CUSTOMER shall use SERVICERS as its exclusive provider of all Services for CUSTOMER.~~
 - 2.2 Subject to Association Rules, Services may be performed by FDMS or BANK as they may determine. In addition to SERVICERS, one or more affiliates of SERVICERS may assist in providing terminals or other equipment and local support functions in connection with this Agreement.
3. **Acceptance of Cards.**
 - 3.1 CUSTOMER will accept any Card properly tendered, without imposing any special conditions not required or allowed by Association Rules. CUSTOMER will assess no special charge or extract any special agreement, condition (including any minimum or maximum transaction amounts) or security from a Cardholder in connection with any Card transaction. CUSTOMER shall not post signs indicating that CUSTOMER will refuse to honor Card transactions below or above a specified amount. CUSTOMER may offer a discount for using cash if clearly disclosed as a discount from the price available for all other means of payment. CUSTOMER shall not engage in acceptance practices or procedures that discriminate against, discourage or favor the offered use of any particular Card accepted by CUSTOMER. CUSTOMER will not require Cardholders to provide personal information such as a home or business telephone number, a home or business address, or any form of identification (such as a driver's license) as a condition for honoring and accepting a Card, unless specifically required by this Agreement or the applicable Association. CUSTOMER shall not accept Cards at terminals that dispense scrip in violation of the Association Rules.
 - 3.2 CUSTOMER will check each Card used during a transaction for validity in accordance with the terms of this Agreement, the Operating Guide and the applicable Association Rules. CUSTOMER will not honor a Card that appears to be invalid or expired.
 - 3.3 All Sales Drafts and Credit Vouchers must include (i) either a manual imprint or an electronic printing of the Card obtained by passing the magnetic stripe on the Card through a point-of-sale terminal, of Cardholder information contained on the Card or magnetic stripe; (ii) the signature of the authorized user as it appears on the Card; (iii) the date of the transaction; (iv) a description of the merchandise sold or rented or the services rendered; and (v) the total cash price of the Card transaction (including taxes).
 - 3.4 Except for transactions completed by using magnetic stripe reading point-of-sale terminals that print Card transaction records or originated at limited amount terminals that are capable of reading magnetic stripes and limit each Card transaction to \$25, CUSTOMER is deemed to warrant the true identity of any Cardholder unless CUSTOMER imprints the Card on the Sales Draft, as described in subsection 3.3, above.
 - 3.5 Unless a Card transaction is governed by Section 6 or otherwise specifically authorized by SERVICERS in writing, CUSTOMER may only complete a Card transaction when (i) the Card is present and (X) the data stored on the magnetic stripe is electronically read and printed by a magnetic stripe reader or (Y) the Card is manually imprinted, (ii) the Card is signed and the signature on the Sales Draft appears to be the same as the signature on the Card, (iii) the Cardholder resembles the person pictured (if any) on the Card, and (iv) all, or the appropriate portion, of the embossed account number on the Card matches with the corresponding digits printed on the Card and with the account number displayed and/or printed by a point-of-sale device reading the magnetic strip on the Card. (If a previously unsigned Card is signed at the time of a Card transaction, CUSTOMER will review (and identify on the Sales Draft) a current, official government identification document (such as a driver's license or passport) bearing the Cardholder's signature.) CUSTOMER will deliver at least one copy of the Sales Draft or agreement or Credit Voucher to the Cardholder.

4. **Operating Guide; Association Rules.**

CUSTOMER acknowledges that it has received, (or will receive promptly upon execution of this Agreement) the Operating Guide, the terms of which are incorporated into this Agreement. CUSTOMER agrees to follow the procedures in the Operating Guide in connection with each Card transaction and to comply with all applicable Association Rules. From time to time, SERVICERS may change the Operating Guide, in whole or in part, and other operating procedures, by providing CUSTOMER with at least 30 days' prior written notice of the change. However, in the event of changes in the Association Rules or due to security reasons, certain changes in Card procedures may become effective on shorter notice. If there is any conflict between the terms of this Agreement and the Operating Guide, the terms of this Agreement will govern, unless the conflict is directly related to a change in the Operating Guide which specifically addresses a procedure or requirement detailed in this Agreement. If CUSTOMER loses or otherwise misplaces the Operating Guide or notices of changes thereto, CUSTOMER shall be responsible for contacting SERVICERS to obtain replacement copies.

5. **Authorization.**

- 5.1 CUSTOMER shall be responsible for obtaining Authorization in advance for each Card transaction. The Authorization number provided by SERVICERS shall be noted by CUSTOMER in the appropriate place on the Sales Draft. If Authorization is declined, CUSTOMER shall not complete the Card transaction.
- 5.2 CUSTOMER shall comply with any special authorization procedures contained in any other sections of this Agreement, the Operating Guide the Schedules and the Association Rules.
- 5.3 CUSTOMER acknowledges that Authorization, (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by SERVICERS that any Card transaction will not be subject to Chargeback.

6. **Telephone and Mail Orders.**

- 6.1 If CUSTOMER is authorized to accept telephone or mail orders, Authorization for each such Card transaction, regardless of the face amount, must be obtained and CUSTOMER must write "TO" (indicating telephone order), or "MO" (indicating mail order) as applicable, on the Sales Draft in lieu of the Cardholder's signature. CUSTOMER assumes all responsibility for identification of the Cardholder and the validity of the Card information for telephone and mail orders. For telephone and mail order Card transactions where merchandise is to be shipped or delivered to or for the Cardholder, the shipping date shall not be more than five calendar days after the Authorization is obtained, and any shipping costs not included in the Authorization amount must not exceed 15% of the amount authorized.
- 6.2 An installment payment option may be offered for telephone or mail order merchandise if all terms are clearly disclosed, each installment is authorized, the first installment is not submitted for settlement until the merchandise is shipped, and subsequent installments are submitted no more frequently than monthly.
- 6.3 Under no circumstances may CUSTOMER require that a Cardholder complete a postcard or other document which displays the Cardholder's account data in plain view when mailed.

7. **Multiple Sales Drafts and Partial Consideration.**

- 7.1 Except as shall be specifically set forth in the Operating Guide or the Association Rules, CUSTOMER shall list all items of goods and services purchased during each Card transaction and the total amount thereof on a single Sales Draft.
- 7.2 CUSTOMER shall comply with all special procedures and conditions applicable under the Operating Guide and the Association Rules with respect to any partial payment, installment payment, delayed delivery or advance deposit situation and any delayed or amended charges for a travel and entertainment transaction. CUSTOMER shall not use more than one Sales Draft to represent a single Card transaction to avoid the need for Authorization.

8. **Preauthorized Orders and Recurring Sales.**

- 8.1 A Preauthorized Order or Recurring Sale may include the payment of recurring charges such as insurance premiums, subscriptions, membership fees, tuition or utility charges and may also include preauthorized health care payments (subject to a Schedule).
- 8.2 If CUSTOMER is authorized to accept Preauthorized Orders or Recurring Sales, Authorization for each such Card transaction, regardless of the amount, must be obtained and CUSTOMER must write "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the Sales Draft in lieu of the Cardholder's signature.
- 8.3 Except for preauthorized health care payments for the incremental costs not covered by insurance, advance deposits and installment payments, all made in compliance with this Agreement and the Operating Guide and Association Rules, a Preauthorized Order or Recurring Sale may not include partial payments made to CUSTOMER for goods or services purchased in a single transaction. In no event may any finance charges be imposed on any periodic payments in connection with a Preauthorized Order or Recurring Sale.
- 8.4 CUSTOMER may not accept a Preauthorized Order or Recurring Sale from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to CUSTOMER a written request (and, when applicable, a written renewal request) identifying (i) the goods or services to be charged to the Cardholder's account, (ii) the amount of the preauthorized or recurring charges (unless such charges are for variable amounts), (iii) the frequency of the preauthorized or recurring charges and (iv) the duration of time for which the Cardholder's permission is granted. If CUSTOMER accepts any Preauthorized Orders or Recurring Sales for variable amounts, CUSTOMER must comply with the supplemental provisions set forth in the applicable Schedules.
- 8.5 The Cardholder's written request (including any written renewal request) must be (i) retained for the duration of the preauthorized or recurring charges; (ii) provided in response to a Card issuing bank's request for original documentation; and (iii) used no longer after receiving notice of cancellation.

9. **Cardholder Refunds and Credits.**

- 9.1 If a Cardholder returns goods or cancels services purchased from CUSTOMER with a Card, or CUSTOMER allows any other price adjustment after a sale has been completed and a refund or adjustment is due to the Cardholder (other than any involuntary refund required by applicable airline or other tariff or by law), CUSTOMER will not return cash to the Cardholder but will instead prepare a Credit Voucher and process each such refund or adjustment, as specified in the Operating Guide and Association Rules. CUSTOMER will give the Cardholder a copy of the completed Credit Voucher.
- 9.2 If CUSTOMER establishes a policy limiting refunds or acceptance of returned merchandise (e.g., no refund, exchange only, in-store credit only, or special conditions), CUSTOMER must follow the procedures regarding refunds and returned merchandise as set forth in the Association Rules including, without limitation, the proper disclosure of such policy on all copies of each Sales Draft in letters at least 1/4" high in close proximity to the space provided for the Cardholder's signature.

- 9.3 CUSTOMER will not accept money from a Cardholder for the purpose of preparing and depositing a Credit Voucher that will effect a deposit to the Cardholder's account. CUSTOMER must not process a Credit Voucher without having completed a previous Card transaction with the same Cardholder (or with a Cardholder who purchased a gift returned by the recipient). Under no circumstances may CUSTOMER require a Cardholder to waive the Cardholder's right to dispute a Card transaction with the Card issuing bank.

10. Presentment of Card Transactions.

- 10.1 CUSTOMER shall electronically or physically deliver to SERVICERS Sales Drafts for all Card transactions to be processed and settled hereunder. The deadlines for submitting Sales Drafts are: (i) for VISA and MasterCard Card transactions, the special time frames specified in the Schedules for CUSTOMER's Card transactions to qualify for the special pricing provided under applicable VISA and MasterCard incentive programs; (ii) for Card transactions involving Cards other than VISA or MasterCard, the time frames established by CUSTOMER's agreement with the applicable Association or by the applicable Association Rules; (iii) the applicable time of day specified in the Schedules hereto and (iv) in no event later than the fifth calendar day or third banking day (whichever is earlier) after completing Card transactions (unless CUSTOMER is entitled to any special extension of these deadlines). CUSTOMER acknowledges that the times specified in clause (iv) of the previous sentence are outside deadlines and that faster time frames are required to qualify for incentive programs.
- 10.2 CUSTOMER will not submit any Sales Draft that was not created in conjunction with a Card transaction between CUSTOMER and the applicable Cardholder. Under no circumstances will CUSTOMER submit any Sales Draft that has been previously charged back by the Cardholder and subsequently returned to CUSTOMER.

11. Settlement of Card Transactions.

- 11.1 SERVICERS will only be required to settle CUSTOMER's Card transactions for Cards, as specified in the Schedules. Promptly after presentment of Sales Drafts pursuant to Section 10, above, as applicable, SERVICERS will initiate a transfer of the applicable settlement funds to CUSTOMER in one of the following ways:
- (i) Direct Settlement Account. If CUSTOMER maintains a Settlement Account at a financial institution with which SERVICERS have arrangements permitting direct payment of settlement funds, SERVICERS will initiate a transfer of such applicable settlement funds through a credit to the Settlement Account. Such settlement will occur by the second banking day after SERVICERS process the applicable Card transactions unless a different time is specified.
 - (ii) Wire Transfer. If CUSTOMER receives payment of settlement funds by wire transfer, SERVICERS will initiate a wire transfer of such applicable settlement funds to the Settlement Account. Settlement by wire generally occurs by 3:00 p.m. Eastern time on the following banking day after SERVICERS process the applicable Card transactions.
 - (iii) Automated Clearing House Credit. If CUSTOMER receives payment of settlement funds through automated clearing house credit, SERVICERS will initiate a transfer of such applicable settlement funds through ACH to CUSTOMER's Settlement Account. Settlement by automated clearing house credit will take place the second banking day after SERVICERS process the applicable Card transactions.
- 11.2 All settlements to CUSTOMER for VISA and MasterCard Card transactions will be based upon gross sales, less credits/refunds, adjustments, applicable discount fees when due, Chargebacks, and any other amounts then due from CUSTOMER to SERVICERS.
- 11.3 All credits to CUSTOMER's Settlement Account or other payments to CUSTOMER are provisional and are subject to, among other things, SERVICERS' final audit, Chargebacks (including SERVICERS' related losses), fees and fines imposed by the Associations. CUSTOMER agrees that SERVICERS may debit or credit CUSTOMER's Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to CUSTOMER. Alternatively, SERVICERS may elect to invoice CUSTOMER for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.
- 11.4 SERVICERS will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including but not limited to any Association or CUSTOMER's financial institution. In addition to any other remedies available to SERVICERS under this Agreement, CUSTOMER agrees that should any of the events set forth in Paragraph 21.3 occur, SERVICERS may, upon at least 24 hours' advance written notice, change processing or payment terms to suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to CUSTOMER from SERVICERS pursuant to the terms of this Agreement, until SERVICERS have had reasonable opportunity to investigate and discuss such event with CUSTOMER. In cases of fraud or similar cause, no prior notice shall be required, but SERVICERS shall notify CUSTOMER in writing within three business days after effectuating a suspension of credits or other payments, which notice shall state SERVICERS' reason for the belief that such fraud or similar cause exists.

12. Financial Accommodation.

CUSTOMER acknowledges and agrees that the Services constitute the extension of financial accommodations to or for the benefit of CUSTOMER within the meaning of Section 365(c) of the Bankruptcy Code and entail the assumption by SERVICERS of significant credit risks. By reason of the assumption of such credit risks, CUSTOMER has granted to and conferred upon SERVICERS certain security, authorization to take reserves and other assurances of payment, all of which are material to SERVICERS' willingness to continue to provide services under this Agreement. The parties acknowledge that this Agreement creates a contract for the extension of financial accommodations to CUSTOMER within the meaning of Section 365(c) of the Bankruptcy Code.

13. Fees; Adjustments; Collection of Amounts Due.

- 13.1 SERVICERS shall charge CUSTOMER a fee for the Services, which shall be calculated and payable pursuant to the Schedules ~~and any additional pricing supplements.~~ The discount fees shown on such Schedules shall be calculated based on the gross amount of only VISA and MasterCard transactions submitted to SERVICERS. The fees with respect to other Card transactions shall be a percentage of the gross amount of, or a per transaction fee for, all such Card transactions. CUSTOMER acknowledges that the fees stated herein are based upon the qualification of CUSTOMER's transactions for certain reduced interchange fees as set by the applicable Association. SERVICERS WILL STRIVE to help CUSTOMER obtain the best available interchange and assessment rate available from the Associations based on the data submitted by CUSTOMER. If CUSTOMER's Card transactions fail to qualify for the reduced interchange fees, SERVICERS shall process such Card transactions at the applicable interchange fees as set by the applicable Association.
- 13.2 The fees for Services set forth in the Schedules and any additional pricing supplement, are based upon assumptions associated with the anticipated annual volume, average transaction size and CUSTOMER's method of doing business. ~~If the actual volume or average transaction size are not as expected or if CUSTOMER significantly alters its method of doing business, SERVICERS may adjust CUSTOMER's discount fee and transaction fees without prior notice.~~

- 13.3 The fees for Services set forth in the Schedules may be adjusted to reflect increases or decreases by Associations in interchange, assessment or other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be CUSTOMER's responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or other third party.
- ~~13.4 IF CUSTOMER receives settlement funds by wire transfer, SERVICERS may charge wire transfer fees of \$10 per wire, notwithstanding any lesser amount shown on the Schedules, during any month in which the average daily settlement funds wire transferred to CUSTOMER is less than \$10,000.~~
- 13.5 In addition to the regular Chargeback fees, as set forth on the Schedules, CUSTOMER agrees to pay SERVICERS any fines imposed on SERVICERS by any Association, resulting from Chargebacks and any other fees or fines imposed by an Association with respect to acts or omissions of CUSTOMER. **SERVICERS will take commercially reasonable steps to notify CUSTOMER of any changes in Association rules and SERVICERS will work with CUSTOMER to help mitigate any fines the Association may impose.**
- ~~13.6 IF CUSTOMER's Chargeback Percentage for any line of business exceeds the estimated industry chargeback percentage, CUSTOMER shall, in addition to the regular Chargeback fees due to SERVICERS and any applicable Chargeback handling fees or fines imposed by the applicable Association, pay SERVICERS the excessive Chargeback fee shown on the Schedules for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry chargeback percentage is subject to change from time to time by SERVICERS in order to reflect changes in the industry chargeback percentage reported by VISA or MasterCard. Each then current industry chargeback percentage for CUSTOMER's applicable line(s) of business will be reflected in the monthly loss prevention report furnished to CUSTOMER.~~
- 13.7 If CUSTOMER believes any adjustments should be made with respect to CUSTOMER's Settlement Account for any amounts due to or due from SERVICERS, CUSTOMER shall notify SERVICERS in writing within 45 days after any debit or credit is or should have been effected. If CUSTOMER notifies SERVICERS after such time period, SERVICERS may, in their discretion, assist CUSTOMER, at CUSTOMER's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but SERVICERS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by SERVICERS to assist CUSTOMER in investigating such matters shall not create any obligation to continue such investigation or assist with any investigation in response to any future notices of possible adjustments that are not timely submitted.
- 14. Chargebacks.**
- 14.1 CUSTOMER shall be responsible for all Chargeback amounts relating to Card transactions settled by SERVICERS where:
- (i) merchandise is returned and a proper credit for Cardholder is not received by SERVICERS for processing;
 - (ii) the Sales Draft is, or is alleged to have been, executed, accepted, endorsed, completed or assigned improperly without authority or not in accordance with the Authorization requirements or provisions of this Agreement;
 - (iii) regardless of any Authorization obtained (including without limitation, telephone and mail order transactions), CUSTOMER completed a transaction when the Cardholder did not sign the Sales Draft;
 - (iv) the signature on the draft was unauthorized as compared to the signature appearing on the Card, the signature panel on the Card was blank, or a limited purpose business purchasing card was accepted without appropriate authorization of the nature of the goods or services purchased (in addition to Authorization of the transaction amount);
 - (v) the Sales Draft is incorrectly completed, incomplete or illegible;
 - (vi) the Cardholder disputes the sale, quality or delivery (or availability for pre-arranged pick-up) of merchandise or the performance or quality of service covered by the Sales Draft or agreement accepted by such Cardholder;
 - (vii) the circumstances in which the Sales Draft was created or submitted by, or credit was received by, CUSTOMER constituted or otherwise involved a breach of any term, condition, representation, warranty or duty of CUSTOMER hereunder;
 - (viii) multiple Sales Drafts were executed to avoid the need to obtain authorization necessary to complete the transaction;
 - (ix) the extension of credit for merchandise sold or rented or services performed was in violation of law or the rules or regulations of any governmental agency, whether federal, state, local or otherwise;
 - (x) a legible copy of the Sales Draft or Credit Voucher cannot be produced by CUSTOMER within ten days of SERVICERS' request (except to the extent SERVICERS are responsible pursuant to Paragraph 16.1);
 - (xi) the Cardholder asserts any claim or defense which the Cardholder has as a consumer of goods or services;
 - (xii) the Cardholder disputes the validity of a telephone or mail order Card transaction;
 - (xiii) the Card transaction is otherwise subject to Chargeback by the Card issuing bank or Cardholder in accordance with the Association Rules or applicable law; or
 - (xiv) the Card transaction is subject to Chargeback in accordance with the procedures set forth in the Operating Guide.
- 14.2 CUSTOMER shall reimburse SERVICERS for any Chargebacks, return items, or other losses resulting from CUSTOMER's failure to produce a Card transaction record requested by SERVICERS within the applicable time limits.
- 15. Representations; Warranties; Limitations on Liability; Exclusion of Consequential Damages.**
- 15.1 Without limiting any other warranties hereunder, CUSTOMER represents and warrants as to each Card transaction submitted by CUSTOMER under this Agreement that:
- (i) the Card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;
 - (ii) the Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;
 - (iii) the amount charged for the Card transaction is not subject to any dispute, setoff, or counterclaim;
 - (iv) the Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Card transaction simultaneously upon CUSTOMER's accepting and submitting the Card transaction for processing;
 - (v) the Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to CUSTOMER by a Cardholder or arising from the dishonor of a personal check);
 - (vi) CUSTOMER has no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibility of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;
 - (vii) the Card transaction submitted to SERVICERS was entered into by CUSTOMER and the Cardholder; and
 - (viii) the Card transaction was made in accordance with the terms of this Agreement, Association Rules and the Operating Guide.
- 15.2 **THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SERVICERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO**

CUSTOMER OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

- 15.3 ~~EXCEPT FOR DAMAGES CAUSED BY INTENTIONAL AND/OR GROSSLY NEGLIGENT ACTS OF OMISSIONS BY SERVICERS,~~ NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SERVICERS, THEIR RESPECTIVE AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 15.4 ~~NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY,~~ SERVICERS' CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY SERVICERS PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.

16. Retention of Records.

- 16.1 If the Schedules provide that SERVICERS shall prepare and retain images (on microfilm or otherwise) of CUSTOMER's paper Sales Drafts and Credit Vouchers, CUSTOMER shall deliver to SERVICERS the originals or copies of CUSTOMER's Sales Drafts and Credit Vouchers in suitable form for imaging no later than seven calendar days from the date of the transaction; provided however, that CUSTOMER shall retain legible copies of Sales Drafts and Credit Vouchers for at least six months following the date of each such transaction. If the Schedules provide that SERVICERS shall capture and store data reflecting Card transactions electronically transmitted to SERVICERS, CUSTOMER shall transmit to SERVICERS all data required to be included on Sales Drafts and Credit Vouchers (or CUSTOMER shall be responsible for any deficiencies in the data transmitted).
- 16.2 If the Schedules provide that CUSTOMER shall retain images (on microfilm or otherwise) or legible copies of CUSTOMER's Sales Drafts and Credit Vouchers, CUSTOMER shall retain legible copies of Sales Drafts and Credit Vouchers for a period of at least three years from the date of each such transaction. CUSTOMER shall submit to SERVICERS a legible copy of a Sales Draft or Credit Voucher within 48 hours of a request by SERVICERS.
- 16.3 Unless the Schedules provide that SERVICERS are responsible for retaining records of CUSTOMER's Card transaction data and CUSTOMER has actually delivered to SERVICERS the applicable Card transaction data containing all required information in legible and suitable form for imaging or electronic capture and storage (as applicable), CUSTOMER shall be responsible for the retrieval of all Sales Drafts and Credit Vouchers requested by SERVICERS within the shortest time limits established by the Association Rules, as specified in the Operating Guide, this Agreement, or other notice from SERVICERS. CUSTOMER shall not be relieved of its responsibility under the preceding sentence for any deficiencies in Card transaction data transmitted or otherwise delivered to SERVICERS, even though SERVICERS may agree to capture or produce images of, store and retrieve any such incomplete data on CUSTOMER's behalf.

17. Cash Payments by and Cash Disbursements to Cardholders.

CUSTOMER shall not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft, it being the right of the Card issuing bank to receive such payments. Taxes on Card transactions must be included in the amount charged and may not be collected by CUSTOMER in cash. CUSTOMER shall not make any cash disbursements to a Cardholder as part of a Card transaction except to the extent expressly authorized by one or more of the Schedules, the Operating Guide or the Association Rules.

18. Confidentiality.

- 18.1 Unless CUSTOMER obtains consents from each applicable Association, SERVICERS, Card issuing bank and Cardholder, CUSTOMER shall not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. CUSTOMER shall use proper controls for and shall limit access to, and shall render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. CUSTOMER must not retain or store magnetic stripe data after a transaction has been authorized. If CUSTOMER stores any electronically captured signature of a Cardholder, CUSTOMER shall not reproduce such signature except upon specific request of SERVICERS.
- 18.2 CUSTOMER acknowledges that it obtains no ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a third party as an asset upon a bankruptcy, insolvency or failure of CUSTOMER's business. Upon a bankruptcy, insolvency or failure of CUSTOMER's business all Card transactions information must be returned to SERVICERS or acceptable proof of the destruction of all Card transaction information must be provided to SERVICERS.

19. Supplies; Advertising.

At CUSTOMER's option and at charges specified from time to time by SERVICERS, SERVICERS may furnish CUSTOMER with operational supplies such as the forms of sales drafts, credit vouchers and Association decals (excluding any supplies for terminals or other equipment, which shall be CUSTOMER's responsibility). CUSTOMER shall display VISA, MasterCard and, if applicable, other Association decals and program marks on promotional materials furnished by SERVICERS, as required by Association Rules, but shall not indicate that VISA, MasterCard or any other Association endorses CUSTOMER's goods or services and shall not continue using such materials after termination of this Agreement.

20. Assignment.

- 20.1 Any transfer or assignment of this Agreement by CUSTOMER, by operation of law or otherwise, is voidable by SERVICERS without SERVICERS' prior written consent. In the event of such transfer or assignment, the party to whom the Agreement was transferred or

assigned shall be bound to the terms and conditions of this Agreement to the same extent as if SERVICERS and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, CUSTOMER shall indemnify and hold SERVICERS harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising in connection with such transferees or assignees, as the case may be, submission of Card transactions to SERVICERS for processing. For purposes of this Agreement, any transfer of voting control of CUSTOMER or its parent shall be considered an assignment or transfer hereof.

- 20.2 Upon notice to CUSTOMER, another VISA and MasterCard member may be substituted for BANK under whose sponsorship this Agreement is performed and for whom FDMS is acting as agent hereunder. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of BANK, including without limitation, full responsibility for its bankcard program and such other obligations as may be expressly required by applicable Association Rules. Subject to Association Rules, SERVICERS may assign or transfer this Agreement and their rights and obligations hereunder and may delegate their duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without the notice to or consent of CUSTOMER.
- 20.3 Except as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

21. Term; Events of Default.

- 21.1 ~~This Agreement and the applicable Schedules shall become effective upon the date this Agreement and the applicable Schedules are signed by BANK, which shall in all instances be on or after the date(s) CUSTOMER and FDMS sign this Agreement and the applicable Schedules and CUSTOMER will be advised of the effective date by SERVICERS.~~
- 21.2 **Either Party may terminate this Agreement at any time by providing 30 days advance notice to the Other Party.** ~~party terminates this Agreement by notice to the others, in writing, at least 60 days prior to the expiration of the term or renewal term, as the case may be.~~
- 21.3 If any of the following events shall occur (each an "Event of Default"):
- (i) a material adverse change in the business, financial condition, business procedures, products or services of CUSTOMER; or
 - ~~(ii) any assignment or transfer of voting control of CUSTOMER or its parent; or~~
 - ~~(iii) a sale of all or a substantial portion of CUSTOMER's assets; or~~
 - (iv) irregular Card sales by CUSTOMER, excessive Chargebacks or any other circumstances which, in SERVICERS' sole discretion, may increase SERVICERS' exposure for CUSTOMER's chargebacks or otherwise present a financial or security risk to SERVICERS; or
 - (v) any representation or warranty of CUSTOMER in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made; or
 - (vi) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Paragraph 22;
 - ~~(vii) CUSTOMER shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any affiliate of SERVICERS, including, but not limited to, any agreement governing check guarantee or check verification services; or~~
 - ~~(viii) CUSTOMER shall default in the payment when due, whether upon maturity or otherwise, of any material indebtedness for borrowed money or any material trade payable (other than any trade payable subject to a good faith dispute by CUSTOMER so long as CUSTOMER is actively pursuing resolution of such dispute); or~~
 - ~~(ix) CUSTOMER shall: commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into a composition agreement or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; generally become unable to pay its debts or trade obligations as they become due; make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or~~
 - ~~(x) a case or other proceeding shall be commenced against CUSTOMER, in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator or the like of CUSTOMER, or of all or any substantial part of the assets, domestic or foreign, of CUSTOMER, and such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against CUSTOMER (including, but not limited to, an order for relief under the Bankruptcy Code) shall be entered; or~~
 - ~~(xi) the independent certified accountants retained by CUSTOMER shall refuse to deliver an unqualified opinion with respect to the annual financial statements of CUSTOMER and its consolidated subsidiaries;~~
- then, upon the occurrence of (1) an Event of Default specified in subparagraphs (iv), (ix) or (x) above, SERVICERS may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder by CUSTOMER to SERVICERS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by CUSTOMER, and (2) any other Event of Default, this Agreement may be terminated by SERVICERS by giving not less than 10 days' notice to CUSTOMER, and upon such notice all amounts payable hereunder by CUSTOMER to SERVICERS shall be due and payable on demand.
- 21.4 Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of this Agreement.
- 21.5 If any Event of Default shall have occurred and be continuing, SERVICERS may, in their sole discretion, exercise all of their rights and remedies under applicable law, including, without limitation, exercising their rights under Section 22.
- 21.6 This Agreement also may be terminated by SERVICERS prior to the then-current expiration date upon at least 90 days' advance written notice, if CUSTOMER's Card transactions fail to conform to the volume or average transaction size representations as set forth in the Schedules.

- 21.7 If this Agreement is terminated for cause, CUSTOMER acknowledges that SERVICERS may be required to report CUSTOMER's business name and the names and other identification of its principals to the Combined Terminated Merchant File maintained by VISA and MasterCard. CUSTOMER expressly agrees and consents to such reporting in the event CUSTOMER is terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by VISA or MasterCard. ~~Furthermore, CUSTOMER agrees to waive and hold SERVICERS harmless from and against, any and all claims which CUSTOMER may have as a result of such reporting.~~
- 21.8 The provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from CUSTOMER and the resolution of any related chargebacks, disputes or other issues involving Card transactions will continue to apply even after termination of this Agreement, until all Card transactions made prior to such termination are settled or resolved. In addition, the provisions of Sections 13 through 18, inclusive, 20, 22, 24 and 25, and Subsections 21.7, 21.9, 26.2 and 26.3, all in this Agreement, shall survive any termination. Upon termination of this Agreement, CUSTOMER agrees to immediately send SERVICERS all the data relating to Card transactions made up to the date of termination.
- 21.9 After termination of this Agreement for any reason whatsoever, CUSTOMER shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to SERVICERS under this Agreement or which may be due to SERVICERS before or after such termination to either SERVICERS or any of SERVICERS' affiliates for any related equipment or related services.
- 22. Reserve Account; Security Interest.**
- ~~22.1 CUSTOMER expressly authorizes SERVICERS to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 22. The initial amount of such Reserve Account shall be set by SERVICERS, in their sole discretion, based upon CUSTOMER processing history and the anticipated risk of loss to SERVICERS.~~
- ~~22.2 The Reserve Account shall be fully funded upon three days notice to CUSTOMER, or in instances of fraud or an Event of Default, reserve account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to CUSTOMER's Settlement Account or any other accounts held by BANK or any of its affiliates; (ii) one or more deductions or off sets to any payments otherwise due to CUSTOMER; (iii) CUSTOMER's delivery to SERVICERS of a letter of credit; or (iv) if SERVICERS so agree, CUSTOMER's pledge to SERVICERS of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to SERVICERS and shall be in a form satisfactory to SERVICERS. In the event of termination of this Agreement by either CUSTOMER or SERVICERS, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by BANK for the greater of ten months after termination of this Agreement or for such longer period of time as is consistent with BANK's liability for Card transactions in accordance with Association Rules. CUSTOMER's funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of BANK's customers, without involvement by an independent escrow agent.~~
- ~~22.3 If CUSTOMER's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CUSTOMER, or if the funds in the Reserve Account have been released, CUSTOMER agrees to promptly pay SERVICERS such sums upon request. In the event of a failure by CUSTOMER to fund the Reserve Account, SERVICERS may fund such Reserve Account in the manner set forth in subsection 22.2, above.~~
- ~~22.4 To secure CUSTOMER's obligations to SERVICERS and their affiliates under this Agreement and any other agreement for the provision of related equipment or related services, CUSTOMER grants to SERVICERS a lien and security interest in and to any of CUSTOMER's funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in the possession of SERVICERS, whether now or hereafter due or to become due to CUSTOMER from SERVICERS. Any such funds, money or amounts may be commingled with other funds of SERVICERS, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of SERVICERS. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, SERVICERS are hereby authorized by CUSTOMER at any time and from time to time, without notice or demand to CUSTOMER or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of CUSTOMER's obligations to SERVICERS and their affiliates under this Agreement and any other agreement with SERVICERS or any of SERVICERS' affiliates for any related equipment or related services (including any check guarantee and check verification services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. CUSTOMER agrees to duly execute and deliver to SERVICERS such instruments and documents as SERVICERS may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.~~
- 23. Financial and Other Information.**
- 23.1 CUSTOMER agrees to provide SERVICERS quarterly financial statements of CUSTOMER within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. CUSTOMER also shall provide such other financial statements and other information concerning CUSTOMER's business and CUSTOMER's compliance with the terms and provisions of this Agreement as SERVICERS may reasonably request. CUSTOMER authorizes SERVICERS to obtain from third parties financial and credit information relating to CUSTOMER in connection with SERVICERS' determination whether to accept this Agreement and SERVICERS' continuing evaluation of the financial and credit status of CUSTOMER. Upon request, CUSTOMER shall provide to SERVICERS or their representatives reasonable access to CUSTOMER's facilities and records for the purpose of performing any inspection and/or copying of CUSTOMER's books and/or records deemed appropriate by SERVICERS.
- 23.2 CUSTOMER will provide SERVICERS with written notice of CUSTOMER's intent to liquidate, substantially change the basic nature of its business, transfer or sell any substantial part (25% or more in value) of its total assets, or if CUSTOMER or its parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, change the control or ownership of CUSTOMER or its parent, 30 days prior to such liquidation, change, transfer or sale taking place. CUSTOMER will also notify SERVICERS of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of CUSTOMER's total assets not later than three days after CUSTOMER obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.
- 24. Indemnification.**

- ~~24.1 CUSTOMER agrees to indemnify and hold harmless SERVICERS from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by CUSTOMER under this Agreement, or arising out of any gross negligence or willful misconduct of CUSTOMER or its employees, in connection with CUSTOMER's Card transactions or otherwise arising from CUSTOMER's provision of goods and services to Cardholders.~~
- ~~24.2 SERVICERS agree to indemnify and hold harmless CUSTOMER from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by SERVICERS under this Agreement or arising out of the gross negligence or willful misconduct of SERVICERS or their employees in connection with this Agreement.~~
25. **Liquidated Damages.**
- ~~25.1 The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, notwithstanding anything to the contrary elsewhere in this Agreement, if (a) CUSTOMER breaches this Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the applicable term of the Agreement in accordance with, and due to, an Event of Default by CUSTOMER specified in subsection 21.3, then SERVICERS will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent the damages which would actually be sustained by SERVICERS as the result of such a termination, the parties have agreed that the amount calculated in the manner specified below is a reasonable pre estimate of SERVICERS' probable loss, which shall be paid to SERVICERS as liquidated damages in the event of any such termination. Any recovery pursuant to this Section 25 shall in no way limit SERVICERS' right to receive any payments due from CUSTOMER pursuant to Section 14. Such liquidated damages shall be paid to SERVICERS within 15 days after CUSTOMER's receipt of SERVICERS' calculation of the amount due. The liquidated damages amount shall equal 80% of the product of (i) the average net monthly fees, as determined in accordance with subsection 25.2, and (ii) the number of months, including any pro rata portion of a month, then remaining in the initial term or any renewal term, as applicable.~~
- ~~25.2 The average net monthly fees shall equal one twelfth of the gross fees payable pursuant to the Schedules, less applicable interchange fees and assessments due pursuant to this Agreement, during the 12 months immediately preceding the date on which (i) SERVICERS receive notice from CUSTOMER of its intention to terminate this Agreement early, or (ii) SERVICERS learn of CUSTOMER's early termination in violation of this Agreement, or (iii) this Agreement is terminated early pursuant to subsection 21.3 (whichever produces the higher amount); provided, however, if the Agreement has been in place less than 12 months, the estimated average net monthly fees shall equal the aggregate gross fees paid hereunder by CUSTOMER, divided by the number of months the Agreement was effective.~~
26. **Miscellaneous.**
- 26.1 No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, elements of nature or other acts of God; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.
- 26.2 This Agreement shall be governed by and construed in accordance with the laws of the State of ~~California~~ **New York** (without regard to its choice of law provisions). In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. **SERVICERS AND CUSTOMER IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.**
- ~~26.3 CUSTOMER shall be liable for and shall indemnify SERVICERS for any and all attorney's fees, collection costs and other costs and expenses paid or incurred by SERVICERS in the enforcement hereof, or in collecting any amount due from CUSTOMER to SERVICERS hereunder or resulting from any breach by CUSTOMER of any of the terms or conditions of this Agreement.~~
- 26.4 If CUSTOMER requests SERVICERS to perform or provide any system enhancements, custom reports, or related service enhancements that are different from or in addition to the system, services and reports SERVICERS otherwise agree to provide to CUSTOMER (collectively, "System Enhancements"), SERVICERS will use reasonable efforts to provide such System Enhancements if CUSTOMER pays SERVICERS the additional fees charged by SERVICERS for such System Enhancements. Following receipt of any request for System Enhancements and prior to providing the requested System Enhancements, SERVICERS shall provide CUSTOMER with a description of the System Enhancements to be made, together with an estimate of SERVICERS' fee for providing such System Enhancements. If CUSTOMER thereafter instructs SERVICERS to make such System Enhancements, SERVICERS shall do so, and CUSTOMER shall pay the additional fees charged by SERVICERS for such System Enhancements.
- 26.5 Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to CUSTOMER at its address appearing at the beginning on this Agreement, and if to SERVICERS at 1307 Walt Whitman Road, Melville, New York 11747, Facsimile (631) 683-7516, Attention: Executive Vice President Operations, with a copy to Attention: General Counsel's Office at 3975 NW 120th Avenue, Coral Springs, Florida 33065, Facsimile: (954)845-5550, and shall be deemed to have been given (i) if sent by mail or courier, when received and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received.
- 26.6 The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.
- 26.7 The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions still remain valid and enforceable. If a court of competent jurisdiction determines that any term or provision contained herein is illegal or invalid for any reason, the illegality or invalidity shall not affect the validity of the remainder of this Agreement. In such case, the parties shall in good faith modify or substitute such provision consistent with the original intent of the parties. Without limiting the generality of this paragraph, if a court determines that any remedy stated in this Agreement has failed of its essential purpose, then all other provisions of this Agreement, including the limitations on liability and exclusion of damages, shall remain fully effective.
- 26.8 This Agreement, along with any Schedules and the Operating Guide, constitutes the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and, except as provided in other Sections of this Agreement,

the Schedules or the Operating Guide, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

- 26.9 The parties acknowledge that the VISA and MasterCard Association Rules give VISA and MasterCard certain rights to require termination or modification of this Agreement with respect to transactions involving VISA and MasterCard Cards and the VISA and MasterCard Card system and to investigate CUSTOMER. The parties also acknowledge that issuers of other Cards, for which SERVICERS perform services on behalf of CUSTOMER, may have similar rights under their applicable Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

The parties hereto have caused this Agreement to be executed by their duly authorized officers. **THIS AGREEMENT IS NOT BINDING UPON SERVICERS UNTIL SIGNED BY SERVICERS ~~OR UPON THE OCCURRENCE OF ONE OF THE EVENTS SET FORTH IN SUBSECTION 21.1.~~**

**CALIFORNIA DEPARTMENT OF CHILD
SUPPORT SERVICES**
("CUSTOMER")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

WELLS FARGO BANK, N.A.
("BANK")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

FIRST DATA MERCHANT SERVICES CORPORATION
("FDMS")

By: _____

Name: _____
(Please Print or Type)

Title: _____

Date: _____

ANNEX 1

The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

- 1.1 "Association" means any entity formed to administer and promote Cards, including VISA and MasterCard, and any other entity as specified on the Schedules to this Agreement.
- 1.2 "Association Rules" mean the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association.
- 1.3 "Authorization" means the process by which CUSTOMER electronically accesses SERVICERS' computerized system, unless such system is inoperable or otherwise not accessible to CUSTOMER, in which case CUSTOMER shall utilize the designated toll-free telephone number, to obtain credit approval from the Card issuing bank before completion of the Card transaction.
- 1.4 "Bankruptcy Code" means title 11 of the United States Code, as amended from time to time.
- 1.5 "Business Day" means a day (other than Saturday or Sunday) on which SERVICERS are generally open for business.
- 1.6 "Card" means a valid credit card or valid off-line debit card bearing the service mark of VISA or MasterCard and, to the extent the Schedules so provide, a valid card issued by any other Associations specified on such Schedules.
- 1.7 "Cardholder" means the individual whose name is embossed on the Card and any authorized user of such Card.
- 1.8 "Chargeback" means the procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion thereof) is returned to Bank or the Card issuing bank, for failing to comply with Association Rules, the liability of which is the CUSTOMER's responsibility.
- 1.9 "Credit Voucher" means the evidence of a refund or price adjustment by CUSTOMER to a Cardholder's account in connection with a prior purchase by such Cardholder using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise.
- 1.10 "CUSTOMER's Chargeback Percentage" means the actual monthly percentage calculated by dividing CUSTOMER's total monthly VISA and MasterCard Chargeback items in any line of business by the number of CUSTOMER's total monthly VISA and MasterCard transactions in such line of business.
- 1.11 "Operating Guide" means the then-current manual prepared by SERVICERS, containing operational procedures, instructions and other directives relating to Card transactions.
- 1.12 "Preauthorized Order" means a Cardholder's written authorization to make one or more future charges to such Cardholder's MasterCard Card account.
- 1.13 "Recurring Sale" means a Cardholder's written authorization to make one or more future charges to such Cardholder's Visa or other non-MasterCard Card account.
- 1.14 "Reserve Account" means a fund established and managed by SERVICERS to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by SERVICERS.
- 1.15 "Sales Draft" means evidence of a purchase of goods or services by a Cardholder from CUSTOMER using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Association Rules.
- 1.16 "Schedules" means the attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement.
- 1.17 "Services" means the activities undertaken by SERVICERS to authorize, process and settle all United States Dollar denominated VISA and MasterCard Card transactions undertaken by Cardholders at CUSTOMER's location(s) in the United States, and all other activities necessary for SERVICERS to perform the functions specified on the Schedules for all other Cards covered by this Agreement.
- 1.18 "Settlement Account" means an account at a financial institution designated by CUSTOMER as the account to be debited and credited by SERVICERS for Card transactions, fees, Chargebacks and other amounts due hereunder or in connection herewith (i.e., fines, penalties, attorneys' fees, etc.).

**Schedule A
Fee Schedule**

Per Item Fees:

MasterCard/Visa	0.06%
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Authorization Fees:

MasterCard/Visa (Web-based through EFSnet)	\$0.04
MasterCard/Visa (Dial)	\$0.06

Additional Fees (per item):

Chargeback Fee	\$5.00
ACH Reject Fee	\$25.00
Voice Authorization	\$0.50
VRU Authorization	\$0.50
Reporting Fees (ClientLine or MyMerchantView Reporting):	No Charge
Association Interchange Fees	For reference see Attachment 1 (pass-through item)

General Pricing Information for Credit Transactions:

1. Billable transactions include: purchases, returns, declines, reversals, and authorizations.
2. The Visa/MC transaction fee includes authorization, data capture and settlement.
3. The fees and charges set forth on this Schedule A are in addition to all other Third Party fees and all fees due and payable to Servicers and/or any applicable Third Party, will be collected by Servicers as set forth in the Agreement.
4. Minimum supplies handling fee of \$11.95 per shipment.
5. Customer shall be responsible for payment of all shipping costs associated with any equipment purchased, leased or maintained by Servicers hereunder.

Attachment 1 – Association Interchange Matrix